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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON DC 20268-0001

ANNUAL COMPLIANCE REPORT, 2014	))	Docket No. ACR2014

REPLY COMMENTS OF MAGAZINE PUBLISHERS OF AMERICA, INC., AND ALLIANCE OF NONPROFIT MAILERS

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Pursuant to Order No. 2313, Magazine Publishers of America, Inc. ("MPA") and the Alliance of Nonprofit Mailers ("ANM") respectfully submit these reply comments. These comments respond to the portions of the initial comments of the National Taxpayers Union ("NTU"), the Public Representative, the Utah Hispanic Chamber of Commerce ("UHCC") and Valpak Direct Marketing Systems, Inc., and Valpak Dealers Association, Inc. (collectively "Valpak") concerning the cost coverage of Periodicals Mail.

Although all of these commenters identify the reported failure of Periodicals Mail to cover its attributable costs as an issue, none of the commenters argue that the Commission has the legal authority to increase the average price of Periodicals Mail faster than the CPI. Accordingly, the body of these reply comments discusses only the economic issues raised by the comments.[1]

[1] MPA and ANM have explained at length in previous Annual Compliance Review proceedings why 39 U.S.C. § 3622(d) and overall structure of the Postal Accountability and Enhancement Act of 2006 ("PAEA") bar above-CPI increases on Periodicals Mail as a remedy for its alleged failure to cover attributable costs. Appendix A to these comments summarizes the controlling legal authorities.

In summary, the Postal Service needs to cut its costs much more than it has done so far. It is past time for the Commission to confront directly the elephant in the living room of Periodicals mail pricing: the Postal Service's chronic failure to rein in the out-of-control costs of Periodicals Mail despite large investments in automation equipment by the Postal Service, and large increases in worksharing by periodical publishers and their mail services providers.

The failure of Periodicals Mail to cover reported attributable costs is indeed troubling. The reported decline in cost coverage for this class lasted for more than a decade until Fiscal Year 2013, when the reported cost coverage of Periodicals Mail rose to 76 percent, four percentage points higher than in Fiscal Year 2012. ACD 2012 at 93; USPS-FY13-1. Moreover, while the reported cost coverage remained at 76 percent in FY 2014, this occurred only because of the substantial rate increase imposed on Periodicals in January 2014. Valpak Initial Comments (February 2, 2015) at V-4, Table V-2. The failure of Periodicals Mail rates to cover 100 percent of reported attributable costs, however, is the result of excessive costs, not overly-constrained prices. Increases in the reported attributable costs of periodicals have outstripped inflation for years despite (1) Postal Service investment in flats automation and (2) improvements in mail preparation and worksharing by mailers that have greatly decreased the work content of Periodicals Mail.

Despite significant USPS investments in flats automation and growth in mailer worksharing, the inflation-adjusted unit costs reported by the Postal Service for the Periodicals class increased by 69 percent from FY 1985 to FY 2014. Calculated from CRA Reports; BLS Series ID CUUS0000SA0. If the Postal Service had simply held the increase in Periodicals unit costs to the rate of inflation during these periods, FY 2014 Periodicals revenue would have easily covered attributable costs.[2]

Rate increases for Periodicals Mail have also exceeded inflation. For example, as shown in the following table, the average increase in Periodicals rates from FY 1996 to FY 2013—84 percent—was substantially higher than (1) the price increase for other classes of mail; *and* (2) the general rate of inflation:

Postal Rate Increases v CPI-U (1996-2014)

Fiscal Year	Rate Increases				CPI-U
	First-Class Mail	Periodicals	Standard Mail	Pkg Services	
1997					2.7%
1998					1.6%
1999	2.5%	5.1%	3.0%	1.9%	1.9%
2000					3.2%
2001	3.5%	12.7%	8.4%	8.1%	3.2%
2002	7.9%	10.0%	7.1%	5.0%	1.5%
2003					2.3%
2004					2.3%
2005					3.3%
2006	5.2%	5.1%	5.4%	5.1%	3.7%
2007	7.0%	11.8%	9.3%	12.0%	2.3%
2008	2.9%	2.7%	2.9%	2.9%	4.4%
2009	3.8%	4.0%	3.8%	3.8%	-0.3%
2010					1.7%
2011	1.7%	1.7%	1.7%	1.7%	2.7%
2012	2.1%	2.1%	2.1%	2.1%	2.4%
2013	2.6%	2.6%	2.6%	2.6%	1.6%
2014	6.0%	5.8%	5.9%	5.8%	1.6%
1996-2014	55.4%	84.3%	66.0%	63.9%	51.7%

This is a paradoxical trend. As MPA, ANM, and ABM detailed in Docket No. ACR2010, limiting increases in Periodicals unit costs to inflation during this period

[2] Had the Postal Service held increases in Periodicals unit costs to inflation, FY 2014 Periodicals costs would have been 41 percent lower.

should not have been difficult. During this period, both automation of the flats mailstream and the amount of worksharing increased, and there were no offsetting trends that should have increased costs. Docket No. ACR2010, Comments of MPA, ANM, and ABM (Feb. 2, 2010) at 8-11.

The trends in worksharing that should have reduced USPS costs apply with equal or greater force today, four years later:

(1) Primarily because of increased co-mailing, the percentage of Periodicals pieces sorted to the Carrier Route level increased from 44.1 percent in FY 1996 to 67.0 percent in FY 2014. Docket No. R97-1, USPS-LR-H-145; Docket No. ACR2014, USPS-FY14-4, FY 2014 Periodicals.xlsx.

(2) The percentage of Periodicals Outside County volume (in terms of advertising pounds) entered at the Destination Sectional Center Facility ("DSCF"), Destination FSS ("DFSS"), or Destination Delivery Unit ("DDU") increased from 30.0 percent in FY 1996 to 76.8 percent in FY 2014. Docket No. ACR2014, USPS-FY14-4, FY 2014 Periodicals.xlsx.[3]

(3) Between FY 1996 and FY 2012, the Postal Service changed mailing standards to eliminate the use of "skin sacks," a practice identified as significantly driving up Periodicals costs.

[3] This comparison is focused on DDU, DFSS, and DSCF-entered Outside-County advertising pounds because data are unavailable to compare the percentage destination-entered for the entire class. The destination entry trend for Periodicals as a whole is substantially similar for two reasons: (1) Periodicals Outside-County volumes comprise the vast majority of all Periodicals; and (2) most destination-entered Periodicals are entered at the DSCF.

> SKIN SACK REDUCTION PROGRAM — Mailing standards will be modified to no longer allow the preparation of certain sacks within Periodicals that contain fewer than the established minimum of 24 pieces…Operational savings will be achieved through a significant reduction in sacks which will result in a reduction in the allied labor associated with processing these sacks.

Docket No. R2005-1, *Postal Rate and Fee Changes, 2005*, USPS-LR-K-49 at 19-20. Primarily because of this change, but also because of an increase in co-mailing, which allows the substitution of pallets for sacks, the number of sacks used to mail Outside County Periodicals dropped by 87.8 percent from FY 2004 to FY 2014. Docket No. R2005-1, USPS-LR-K-91, Tables.xls, "Table 3"; Docket No. ACR2014, USPS-FY14-4, FY 2014 Periodicals.xlsx.[4]

[4] The USPS also implemented charges for sacks and flats tubs.

CONCLUSION

The Commission should continue to encourage the Postal Service to take serious steps to rein in its costs for handling Periodicals Mail.

Respectfully submitted,

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Appendix A

THE FAILURE OF PERIODICALS MAIL TO COVER THE COSTS ASSERTEDLY ATTRIBUTABLE TO THE CLASS GIVES THE COMMISSION NO AUTHORITY TO IMPOSE OR APPROVE ABOVE-CPI RATE INCREASES FOR THE CLASS.

A. For Periodicals Mail, The CPI Cap of 39 U.S.C. § 3622(d) Trumps The Attributable Cost Floor of 39 U.S.C. § 3622(c)(2).

The failure of a class of mail to satisfy the attributable cost "factor" of Section 3622(c)(2) does not give the Commission authority to impose or approve above-CPI rate increases for the class. Like the other "factors" and "objectives" of sections 3622(b) and (c), section 3622(c)(2) is subordinate to the "'out-of-bound' lines" established by the CPI-based cap on class prices (§ 3622(d)), the limit on worksharing discounts (§ 3622(e)), and the revenue ceilings for the various categories of preferred mail (§ 3626).

As always, the first step in divining the meaning of a statute is "the language of the statute itself." *Caraco Pharm. Labs v. Novo Nordisk*, 132 S. Ct. 1670, 1680 (2012); *CSX Transp., Inc. v. Alabama Dept. of Rev*., 131 S. Ct. 1101, 1107 (2011). The plain language of Section 3622 establishes the CPI cap as the primary requirement of any system of rate regulation developed by the Commission and prevents the Commission from eliminating that requirement during its 10-year review of the system. PAEA § 401, codified at 39 U.S.C. § 3622(d)(1)(A), prescribes the CPI cap in mandatory terms ("requirements" and "shall"):

> ***Requirements.***—
>
> (1) In general.—The system for regulating rates and classes for market-dominant products ***shall***—
>
> (A) include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to the change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates; . . . .

39 U.S.C. § 3622(d)(1)(A) (emphasis added).

The CPI cap limits the annual increase in average revenue per piece on any market-dominant class of mail to the rate of inflation. Section 3622(d) provides two exceptions to the CPI cap: exigent circumstances (§ 3622(d)(1)(E)) and the use of prior rate increase authority that has been banked (§ 3622(d)(2)(C)). Beyond these two exceptions, this CPI cap is absolute. Docket No. RM2009-3, *Consideration of Workshare Discount Rate Design*, Order No. 536 (Sept. 14, 2010) at 16-17, 35–36; *USPS v. PRC*, 676 F.3d 1105, 1108 (D.C. Cir. 2012), *on remand*, Order No. 1427 (Aug. 9, 2012) at 17–19. As noted above, Section 3622(d), in contrast to Section 3622(b) ("Objectives") and Section 3622(c) ("Factors"), is entitled "Requirements."

Other provisions of Section 3622,—e.g., the rounding provision,[5]—flesh out how the price cap shall be implemented. The provisions that leave the Commission some discretion—e.g., Section 3622(d)(1)(C), which directs the Commission to develop procedures for reviewing non-compliance with the CPI rate cap—concern interstitial

[5] 39 U.S.C. § 3622(d)(2)(B) ("Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.").

details and enforcement procedures.

The mandatory language used by Congress in establishing the CPI cap (the Commission "shall" establish a regulatory system, including the "requirement" of the CPI cap) and the central role of the CPI cap in the PAEA ratemaking scheme foreclose any claim that the statute makes the CPI cap merely optional. "The world 'shall' is ordinarily 'the language of command.'" *Alabama v. Bozeman*, 533 U.S. 146, 153 (2001) (citations omitted); *see also Lopez v. Davis*, 531 U.S. 230, 231 (2001) ("Congress used 'shall' to impose discretionless obligations"). Although the courts sometimes treat "shall" as permissive when treating the word as mandatory would produce results that are "inconsistent with the manifest intent of the legislature or repugnant to the context of the statute," *Kakeh v. United Planning Org., Inc.* 655 F. Supp. 2d 107, 124–25 (D.D.C. 2009), the plain meaning and purpose of the language mandating the CPI cap are aligned: the binding character of the cap is the linchpin of the statute.

The Commission has recognized that absolute, "central" and "indispensable" role of the CPI cap in the statutory hierarchy:

> Quantitative pricing standards are at the top of the statutory hierarchy. Next in the hierarchy are the qualitative "objectives" listed in section 3622(b), followed by the qualitative "factors" listed in section 3622(c). Under this hierarchy, violations of the three quantitative pricing requirements are "out of bounds." The Postal Service has broad flexibility to develop prices to achieve the qualitative objectives and factors of sections 3622(b) and (c) *so long as its prices are "in bounds" because they satisfy these quantitative requirements*.

Docket No. RM2009-3, *Consideration of Workshare Discount Rate Design*, Order No. 536 (Sept. 14, 2010) at 16-17, 35-36 (emphasis added); *accord*, Docket No. R2010-4, *Rate Adjustment Due to Extraordinary or Exceptional Circumstances*, Order No. 547 (Sept. 30, 2010) at 10–13, 49–50.

As the Commission explained, the Congress adopted the CPI cap to replace the break-even mandate imposed by pre-2006 law as the main safeguard for users of market-dominant mail products. Order No. 547 at 10–12. "PAEA removed any reference to cost-of-service regulation, establishing the price cap as the *only regulatory model to be used under the new rate system*." *Id*. at 10 (emphasis added). "The broad flexibility" in pricing otherwise allowed the Postal Service by PAEA "underscores the importance of the price cap as a protection mechanism for ratepayers." *Id*. at 12. "The price cap . . . stands as the single most important safeguard for mailers." *Id.* at 13. The "role of the price cap is central to ratemaking, and the integrity of the price cap is indispensable if the incentive to reduce costs is to remain effective. Therefore, it would undermine the basic regulatory approach of the PAEA if the Postal Service could pierce the price cap routinely." *Id.* at 49–50.

The Commission reaffirmed this point in its Annual Compliance Determination ("ACD") for Fiscal Year 2010. Rejecting the Public Representative's contention in Docket No. ACR2010 that the attributable cost provision of 39 U.S.C. § 3622(c) stood on equal footing with the CPI-based price cap of section 3622(d), the Commission specifically held that the price cap trumps the attributable cost floor:

> The Public Representative reasons that the statutory price cap and the attributable cost floor provision in section 3622(c)(2) are on equal footing. This is based on the contention that section 3622(c)(2) is a quantitative

> requirement, notwithstanding its location with the cluster of statutory factors the Commission identified, in Order No. 536, as qualitative….
>
> Section 3622 creates a hierarchy based on "requirements," sections 3622(d) and (e), "objectives," section 3622(b), and "factors," section 3622(c). With the exception of an exigent rate request and use of banked pricing authority, the PAEA's price cap mechanism in section 3622(d)(1)(A) takes precedence over the statutory pricing objectives and factors in sections 3622(b) and (c), even if some of these can be considered quantitative. Therefore, to the extent an objective or factor with a quantitative component can be seen as competing with the price cap, the price cap has primacy . . .
>
> [T]he objectives and factors, including those that can be regarded as quantitative operate within the context of the price cap; they are not on an equal footing with it. However, giving precedence to the price cap does not render the attributable cost floor provision inconsequential. It advances the section 3622(b)(5) objective of assuring adequate revenues to maintain financial stability and promotes the recognition of other objectives and factors. Consequently, the Commission will continue to press for meaningful cost-reduction efforts, examination of costs, and use of pricing flexibility to promote PAEA policies.

FY 2010 ACD (March 29, 2011) at 18-19 (footnotes omitted). Hence, the failure of Periodicals rates to satisfy the attributable cost factor of 39 U.S.C. § 3622(c)(2) does not, without more, make Periodicals mail out of "compliance with" the Act as a whole. As the Commission explained in denying Valpak's request for a finding of noncompliance in the same docket:

> The Commission concludes that the rates for Periodicals do not satisfy section 3622(c)(2), but it does not find FY 2010 Periodicals rates out of compliance with applicable provisions of chapter 36 or regulations promulgated thereunder. A finding that a product (either individually or collectively) fails to satisfy a provision of title 39 does not compel a finding of non-compliance. In making its determination, the Commission must take into account numerous sometimes conflicting considerations.

FY 2010 ACD (March 29, 2011) at 17.

On judicial review of the portion of the Commission's decision dealing with Standard Mail flats, Valpak acknowledged to the Court of Appeals that the Commission's treatment of the Section 3622(d) price cap as a binding constraint on Periodicals prices was consistent with Commission precedent:

> The Commission has found that Periodicals prices cannot lawfully be raised to full cost coverage levels without violating the class-wide price cap.

Brief of Intervenors L.L. Bean, Inc., and Valpak in *USPS v. PRC*, No. 11-1117 (D.C. Cir., filed Dec. 7, 2011) at 25 n. 16. The court agreed with the Commission's reading of Title 39, finding that "the pricing" of Periodicals Mail "is subject to special statutory restrictions" inapplicable to the pricing of Standard Mail flats. *USPS v. PRC*, 676 F.3d 1105, 1108 (D.C. Circ. 2012).

On remand, the Commission reiterated that it faced greater statutory constraints in raising prices for Periodicals mail, as a class, than Standard Mail flats, a subset of a class:

> Moreover, the fact that Periodicals has only two products (Within County and Outside County Periodicals), neither of which covered its attributable costs, limits the opportunity for the Postal Service to improve attributable cost coverage by means of price increases while remaining within the Periodicals class price cap.

Docket No. ACR2010-R, *Annual Compliance Report, 2010*, Order No. 1427 (August 9, 2012) at 17. Because "96 percent of class revenues are provided by Outside County Periodicals, the Postal Services does not have the same flexibility to set prices substantially above the price cap as it does with respect to products within Standard Mail." *Id*. at 18 (citing FY2010 ACD at 94).

The Commission likewise alluded to this legal constraint in its Annual Compliance Review for the Fiscal Years 2011 and 2013. Rejecting once again Valpak's request for an above-CPI rate increase on Periodicals Mail, the Commission noted in ACR2011 that "unlike Standard Mail, Periodicals as a class fails to cover costs, *thus foreclosing a rebalancing pricing strategy*." FY 2011 *Annual Compliance Determination* (March 28, 2012) at 17 (emphasis added). *Accord*, FY 2013 *Annual Compliance Determination* (March 27, 2014) at 44 ("Despite the failure of Periodicals to cover costs since FY 1996, the Commission does not find the rates and fees for the Periodicals class to be out of compliance for FY 2013.").

B. Other Provisions Of Title 39 Also Provide No Basis For Above-CPI Price Increases on Periodicals Mail.

In past years, Valpak and other commenters sometimes also argued that ratemaking provisions of Title 39 *other than* Section 3622(c)(2) allowed the Commission and the Postal Service to raise Periodicals Mail rates faster than the CPI. These arguments were also unfounded. We discuss in turn the "objectives" and "factors" of Sections 3622(b) and (c); the antidiscrimination provision of Section 403(c); the Governors' general postal policies of Sections 101(d) and 404(b); and the enforcement mechanism of Sections 3653 and 3662.

1. Other "objectives" and "factors" of Sections 3622(b) and 3622(c)

The Commission made clear in Docket Nos. RM2009-3, ACD2010 and ACD2011 that *none* of the "objectives" and "factors" of 39 U.S.C. §§ 3622(b) and (c), alone or in combination, override section 3622(d) in the hierarchy of Section 3622. *See* pp. A2-A4, *supra* (citing precedent). The CPI-based price cap of section 3622(d) outweighs all of the objectives and factors combined. FY 2010 ACD (March 29, 2011) at 17-19.

2. 39 U.S.C. § 403(c)

39 U.S.C. § 403(c), which bars "undue or unreasonable discrimination among users of the mails" and "undue or unreasonable preferences to any such user," also fails to justify above-CPI price increases on Periodicals Mail. "Discrimination" and "preferences" covered by Section 403(c), however, are limited to price or service differences among mailers and services that are "like" or similarly situated—a concept that is generally considered to be limited to ratepayers within the same rate class. Docket No. MC2012-14 and R202-8, *Valassis NSA*, Order No. 1448 (Aug. 23, 2012) at 33-35; Docket No. C2009-1, *Complaint of GameFly, Inc.*, Order No. 718 (April 20, 2011) at 44-63, remanded on other grounds, *GameFly, Inc. v. PRC*, 740 F.3d 145 (D.C. Cir. 2013); *MCI Telecommunications Corp. v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990). Users of other mail classes are not similarly situated with users of Periodicals Mail. Periodicals Mail is a separate class from all other kinds of mail. It has different costs, demand characteristics and content—most notably in its "educational, cultural, scientific, and informational value to the recipient" under 39 U.S.C. § 3622(c)(11). Hence, differences between the contribution or cost coverage between Periodicals mail and *other* mail classes are governed by the rate reasonableness provisions of Section 3622, not the antidiscrimination provision of Section 403(c).

3. 39 U.S.C. §§ 101(d) and 404(b)

39 U.S.C. §§ 101(d) and 404(b) also provide no legal basis for above-CPI price

increases on Periodicals Mail. Section 101(d), which was added to Title 39 by the Postal Reorganization Act of 1970, establish a "policy" that postal rates "shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis" and "shall not be apportioned to impair the overall value of such service to the people." Section 404(b) provides that:

> Except as otherwise provided, the Governors are authorized to establish reasonable and equitable classes of mail and reasonable and equitable rates of postage and fees for postal services in accordance with the provisions of chapter 36. Postal rates and fees shall be reasonable and equitable and sufficient to enable the Postal Service, consistent with best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

These general policy desiderata are incorporated by reference into pricing in the catch-all "factor" of Section 3622(c)(14). Like Section 3622(c)(2), Section 3622(c)(14)—and, through it, sections 101(d) and 404(b)—are subordinate to the CPI cap on class-average price increases imposed by Section 3622(d). *See* pp. A1-A4, *supra*; 39 U.S.C. § 404(b) (first four words).

This conclusion is buttressed by the protean character of Sections 101(d) and 404(b). A directive to "apportion" overall costs in a way that is "fair and equitable" and does not "impair the overall value of such service" is essentially a directive to charge "just and reasonable rates," a broad and general requirement. *See*, *e.g.*, *National Ass'n of Greeting Card Publishers v. USPS*, 462 U.S. 82526 (1983); *Verizon Communications Inc. v. FCC*, 535 F.2d 467, 501-502 (2002). Likewise, the directive of 39 U.S.C. § 404(b) that postal rates and fees should generate revenues sufficient "to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States") is a generic statement of the goal of public utility rate regulation. To give these provisions priority over the specific CPI-based cap imposed by Section 3622(d) would violate the basic rule of construction that "the specific governs the general," particularly where "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S.Ct. 2065, 2070-72 (2012) (citations omitted); *accord*, *Morton v. Mancari*, 417 U.S. 535, 550–51 (1974); *Mail Order Ass'n of America v. USPS*, 986 F.2d 509, 515 (D.C. Cir. 1993).

The Court of Appeals' finding in *USPS v. PRC*, 676 F.3d 1105, 1108 (D.C. Cir. 2012), that "§ 3622(c) permits the Commission to invoke § 101(d) vis-à-vis market dominant products, at least in extreme circumstances" does not support a contrary result. On remand of ACR2010 from the Court of Appeals, the Commission explicitly declined to construe § 101(d) as a general license for the Commission to "automatically, pursuant to 39 U.S.C. § 3653, find the Postal Service out of compliance and order remedial action . . . any time rates for a product fail to cover attributable costs" (Order No. 1427 at 4). Rather, the "totality of the circumstances presented is critical to Commission evaluations under section 3653." *Id*. Among the factors that the Commission identified as crucial were the

> failure of the Postal Service to address the shortfall by rate increases, cost decreases, or a combination thereof, *despite the capability to do so*; and failure of the Postal Service to provide an adequate explanation for not taking necessary remedial steps designed to ameliorate the cost coverage shortfall.

Order No. 1427 at 9 (emphasis added).

Applying these factors, the Commission specifically rejected Valpak's claim that §§ 101(d) and 3653 warranted above-CPI increases on Periodicals Mail. The

Commission explained:

> Because of the special situation presented by the Periodicals class, [Valpak] urged the Commission to find that the Postal Service's pricing policies violate section 101(d) and that Periodicals prices should be increased substantially above the statutory cap . . . [B]ecause 96 percent of class revenues are provided by Outside County Periodicals, *the Postal Service does not have the same flexibility to set prices substantially above the price cap as it does with respect to products within Standard Mail*.
>
> * * *
>
> In the case of periodicals, the Postal Service faces a long-standing situation different than the one presented by Standard Mail Flats. As the Court itself recognized, the pricing of Periodicals is subject to special pricing limitations. 676 F.3d at 1108. Moreover, Periodicals, as a class, and both of the Periodicals products fail to cover costs, thereby limiting the opportunity for achieving full cost coverage by price increases within the price cap for the Periodicals class. To the extent permitted by the constraints of that price cap, the Postal Service has increased prices.

Order No. 1427 at 18-20 (emphasis added). *Accord*, *id*. at 17.

4. 39 U.S.C. §§ 3653 and 3662

Nor may a substantive ratemaking standard be bootstrapped from the remedial provisions of 39 U.S.C. §§ 3653 and 3662. Section 3653 is merely an enforcement mechanism, and does not establish substantive ratemaking standards in its own right. The Commission may take action against a rate under section 3653 only if the rate was in noncompliance with the "applicable provisions *of this chapter* [i.e., chapter 36 of Title 39] (or regulations promulgated thereunder)." 39 U.S.C. § 3653(b)(1) (emphasis added). The remedial provisions of 39 U.S.C. § 3662 in turn may be invoked in an annual compliance review proceeding only upon such a finding of noncompliance. *Id*., § 3653(c). Without any independent basis for a finding of noncompliance, no remedial action by the Commission under § 3653 or 3662 is "appropriate" under § 3653(c). *See*

FY 2010 ACD (March 29, 2011) at 17 (“Given these considerations, the Commission need not address the scope of remedial powers under section 3653.”).